

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN AND
FOR THE COUNTY OF ADA IN AND FOR THE STATE OF IDAHO**

GUILTY PLEA ADVISORY AND FORM (JUDGE CHERI COPSEY)

TO BE FILLED OUT BY THE DEFENDANT

Defendant's Name: _____ Signature _____

Date: _____ Case Number: _____

Age: _____ Date of Birth: _____

Nature of Charge(s): _____ Minimum & Maximum Possible Penalty: _____

**STATEMENT OF RIGHTS & EXPLANATION OF WAIVERS BY PLEA OF GUILTY
AND INFORMATION SPECIFIC TO DRUG COURT
(PLEASE INITIAL EACH RESPONSE)**

1. You have the right to remain silent. You do not have to say anything about the crime(s) you are accused of committing. If you choose to have a trial, the State cannot require you to testify. If you do decide to testify, however, the State will be permitted to ask you questions on cross examination and anything you say can be used as evidence against you in court.

I understand that by pleading guilty I am waiving my right to remain silent before and during trial. _____.

2. The waiver of your right to remain silent only applies to your plea of guilty to the crime(s) in this case. Even after pleading guilty, you will still have the right to refuse to answer any question or to provide any information that might tend to show you committed some other crime(s). You can also refuse to answer or provide any information that might tend to increase the punishment for the crime(s) to which you are pleading guilty.

I understand that by pleading guilty to the crime(s) in this case, I still have the right to remain silent with respect to any other crime(s) and with respect to answering questions or providing information that may increase my sentence. _____.

3. You have the right to be represented by an attorney. If you want an attorney and cannot pay for one, you can ask the judge for an attorney who will be paid by the county. _____.

4. You are presumed to be innocent. You would be found guilty if: 1) you plead guilty in front of the judge, or 2) you are found guilty at a jury trial.

I understand that by pleading guilty I am waiving my right to be presumed innocent. _____.

5. You have the right to a speedy and public jury trial. A jury trial is a court hearing to determine whether you are guilty or not guilty of the charge(s) brought against you. In a jury trial, you have the right to present evidence in your defense and to testify in your own defense. The state must convince each and every one of the jurors of your guilt beyond a reasonable doubt.

I understand that by pleading guilty I am waiving my right to a speedy and public jury trial. _____.

6. You have the right to confront the witnesses called against you. This occurs during a jury trial where the state must prove its case by calling witnesses to testify under oath in front of you, the jury, and your attorney. Your attorney could then cross-examine (question) each witness. You could also call your own witnesses of your choosing to testify concerning your guilt or innocence. If you do not have the funds to bring those witnesses to court, the state will pay the cost of bringing your witnesses to court.

I understand that by pleading guilty, I am waiving my right to confront the witnesses against me, to present witnesses on my own behalf and to present evidence in my defense. _____.

7. The State has the burden of proving you guilty beyond a reasonable doubt.

I understand that by pleading guilty, I am waiving my right to require the State to prove my guilt beyond a reasonable doubt. _____.

8. **Drug Court Guilty Plea.** I understand that in order to accept the option to participate in Drug Court, I must plead guilty to the charge(s) in the Information. _____.

If I decide not to plead guilty, I cannot participate in Drug Court and my case will be remanded to the Magistrate division for preliminary hearing unless there has already been a preliminary hearing. _____.

If I decide not to plead guilty, my release on my own recognizance (ROR) may be revoked and the Court may set bond on my case. _____.

If I plead guilty, I cannot ask to withdraw my plea at a later date simply because I no longer wish to participate in Drug Court. _____.

9. **Termination from Drug Court.** I understand that if I choose to terminate or I am terminated from the Drug Court program by the Court, the Drug Court Judge will set my case for sentencing. I also understand that any violation of Drug Court rules or the **Conditions Of Release** may result in termination. I also understand that termination and sentencing will be done by my Drug Court Judge, not by a different Judge and I have no objection to my Drug Court Judge making that determination. Upon termination from the program, my ROR release/bond may be revoked pending sentencing. _____.

I further understand that I could be terminated from Drug Court if I breach any express term or condition of any contract or if I am not satisfactorily progressing through the drug court program and treatment phases or if I am not doing what is expected of me. _____

Unless I waive my right to a hearing, once termination proceedings are begun the State would have the burden to prove the grounds for termination by a preponderance of the evidence; that I have a right to confront and cross examine those who would testify against me; that I have the right to remain silent and cannot be forced to make any statements; that I have the right to put on a defense and to call witnesses on my behalf; and that I have a right to counsel. _____

10. **Conditions of Release.** I understand that while I am a Drug Court participant, my ROR release or bond will be continued. However, my release will also be subject to conditions related to my participation in the Drug Court program. _____.

I agree that these conditions include abstinence from illegal drugs and alcohol, compliance with my treatment program, attending scheduled Drug Court sessions, paying program fees, compliance with all program rules and **making satisfactory progress towards graduation.** _____

I agree to at all times remain truthful with everyone with whom I deal, including but not limited to the Drug Court Judge, the Drug Court Coordinator, Drug Court staff and my treatment provider and I shall not cheat, tell any lie, or exaggerate or minimize my statements, conduct or actions in anyway. _____

I agree to comply with and obey any curfew that may be imposed by the Drug Court Staff or Drug Court Judge. _____

I agree to be tested for the use of substances, including alcohol, throughout the entire treatment process. I also agree any attempts to dilute, adulterate, or tamper with drug or alcohol testing, including any other participant's testing, may lead to termination from Drug Court. _____.

I agree to complete any forms and/or contracts required by the Drug Court program. _____.

I agree that the Court can revoke my ROR release and impose sanctions for failing to comply with these conditions of release. _____.

I agree that I can be held without bond *for an indeterminate period of time* if I am in violation of any condition of my drug court agreement. _____

I agree to not take any over the counter drugs **or** herbal drugs/preparations (including preparations like "Spice" or any other substance in an attempt to get "high") **without a doctor's prescription**; however I can take ibuprophen (Advil), acetaminophen (Tylenol) or aspirin without a doctor's prescription. _____

I agree that I cannot use any products or foods that contain alcohol/ethanol, including mouthwash or hand sanitizers, or eat any product containing poppy seeds and that it is my responsibility to avoid these items. _____

I agree that I will be sanctioned if I test positive for alcohol or any other illegal drug. _____

I agree that if I attempt to dilute, adulterate, or tamper with drug or alcohol testing, including another participant's testing, that I may be sanctioned and such sanctions can include termination; I also agree I may be sanctioned for appearing late or failing to appear at any drug or alcohol testing. _____

I agree that I cannot associate or have contact with individuals specified by the probation officer or this Court and that can include family or friends. _____

I agree to respect and obey all laws and shall comply with any lawful request of Drug Court or any law enforcement officer or agent of the Department of Probation & Parole. _____

I agree that I will not associate or have contact with anyone who is committing a law violation; who is on probation or parole; or who is a convicted felon. I will also not associate or have contact with any group or individual as ordered by Drug Court or the Drug Court Coordinator. _____

I agree to seek and maintain employment, be enrolled as a fulltime student or participating in such programs as approved by Drug Court. I agree to obtain a GED, if I am not a high school graduate, before Drug Court Graduation unless an exemption is granted by the Drug Court Team. A change of employment or education shall not occur without prior written permission of the Drug Court Coordinator. _____

I agree that I shall not purchase, carry, own or have in my possession or control any firearm, ammunition, explosives, archery equipment, or weapons of any type and that this affects where I live. I agree to not possess or control any law enforcement or surveillance equipment, including but not limited to, scanners, video surveillance or handcuffs/keys. _____

I agree to pay all costs, fines and court ordered restitution and I understand I cannot graduate until all costs, fines and court ordered restitution are fully paid. _____

11. **Fourth Amendment Waiver.** I understand I have the right to remain free from unreasonable searches and seizures and, normally, this means that law enforcement must have a search warrant issued by a judge before my person, place of residence or things can be searched. To participate in Drug Court, I agree to waive this right and I agree and consent to the search and seizure of my person, automobile, real property, and any other property at any time and at any place by any probation officer or any person assisting a probation officer or law enforcement and I waive my constitutional right to be free from such searches and seizures for as long as I am a participant in the Drug Court. _____
12. **Firearms/Weapons.** I understand the probation department assists the drug court judge in monitoring progress and compliance in drug court and I will not be permitted to reside in any residence where firearms or other weapons are present. _____
- 13 **Graduation.** Upon graduation from the Drug Court program, I understand the Court will withdraw my guilty plea and dismiss the case against me, unless I am otherwise advised at the time I enter my plea. _____

14. **Waive Confidentiality.** Treatment records are confidential; I understand I will be required to waive confidentiality. _____

QUESTIONS REGARDING PLEA

(Please answer every question. If you do **not** understand a question consult your attorney before answering.)

PLEASE CIRCLE ONE

1. Do you read and write the English language? **YES NO**
If not, have you been provided with an interpreter to help you fill out this form? **YES NO N/A**
2. What is your true and legal name? _____.
3. What was the highest grade you completed? _____.
If you did not complete high school, have you received either a GED or HSE?
YES NO N/A
4. Are you currently under the care of a mental health professional? **YES NO**
If you answered "yes," what is the mental health professional's name? _____

5. Have you ever been diagnosed with a mental health disorder? **YES NO**
If you answered "yes," what was the diagnosis and when was it made?

6. Are you currently prescribed any medication? **YES NO**
If you answered "yes," what medications are you taking at this time?

If you answered "yes," have you taken your prescription medication during the past 24 hours? **YES NO N/A**
7. In the last 24 hours, have you taken any medications or drugs, *INCLUDING over the counter drugs*, or drunk any alcoholic beverages? **YES NO**
If "yes," what have you taken? _____
- Do you believe this affects your ability to understand these questions, and make a reasoned and informed decisions in this case? **YES NO N/A**
8. Is there any other reason that you would be unable to make a reasoned and informed decision in this case? **YES NO**

If "yes," what is the reason? _____

9. Is your guilty plea the result of a plea agreement? **YES NO**

If you answered "yes," what are the terms of that plea agreement? (If available, a written plea agreement should be attached hereto as "Addendum 'A'")

10. There are two types of plea agreements. Please initial the **one** paragraph below which describes the type of plea you are entering:

- a. I understand that the court is **not** bound by the plea agreement or any sentencing recommendations, and may impose any sentence authorized by law, including the maximum sentence stated above. Because the court is not bound by the agreement, if the district court chooses not to follow the agreement, I will not have the right to withdraw my guilty plea. _____.
- b. I understand that my plea agreement is a binding plea agreement. This means that if the district court does not impose the specific sentence as recommended by both parties, I will be allowed to withdraw my plea of guilty pursuant to Rule 11(d)(4) of the Idaho Criminal Rules and proceed to a jury trial. _____.

11. As a term of your plea agreement, are you pleading guilty to more than one crime? **YES NO**

If you answered "yes," do you understand that your sentence for each crime could be ordered to be served either concurrently (at the same time) or consecutively (one after the other)? **YES NO N/A**

12. Is this a conditional guilty plea in which you are reserving your right to appeal any pre-trial issues? **YES NO**

If you answered "yes," what issue are you reserving the right to appeal?

13. Have you waived your right to appeal your judgment of conviction as part of your plea agreement? **YES NO**

14. Because you are entering Drug Court, do you understand that if you are terminated from Drug Court or you choose to terminate Drug Court, you will not be allowed to withdraw your guilty plea and the Court may impose the maximum sentence provided by law? **YES NO**

What do you understand the maximum sentence is? _____

15. Have any other promises been made to you which have influenced your decision to plead guilty? **YES NO**

If you answered "yes," what are those promises?

16. Do you feel you have had sufficient time to discuss your case with your attorney? **YES NO**

17. Have you told your attorney everything you know about the crime? **YES NO**

18. Is there anything you have requested your attorney to do that has not been done? **YES NO**

If you answered "yes," please explain. _____

19. Your attorney can get various items from the prosecutor relating to your case. This may include police reports, witness statements, tape recordings, photographs, reports of scientific testing, etc. This is called discovery. Have you reviewed the evidence provided to your attorney during discovery? **YES NO**

20. Are there any witnesses who could show your innocence? **YES NO**

If you answered "yes," have you told your attorney who those witnesses are?

YES NO N/A

21. Do you understand that by pleading guilty you waive any defenses, both factual and legal, that you believe you may have in this case? **YES NO**

22. Are there any motions or other requests for relief that you believe should still be filed in this case? **YES NO**

If you answered "yes," what motions or requests? _____

23. Do you understand that if you enter an unconditional guilty plea in this case you will not be able to challenge any rulings that came before the guilty plea including:

- 1) any searches or seizures that occurred in your case,
- 2) any issues concerning the method or manner of your arrest, and
- 3) any issues about any statements you may have made to law enforcement?

YES NO

24. Do you understand that when you plead guilty, you are admitting the truth of each and every allegation contained in the charge(s) to which you plead guilty?

YES NO

25. Are you currently on probation or parole?

YES NO

If you answered "yes", do you understand that a plea of guilty in this case could be the basis of a violation of that probation or parole and additional punishment?

YES NO N/A

26. **IF YOU ARE NOT A CITIZEN OF THE UNITED STATES**, do you understand that by pleading guilty you could be deported or removed from the United States, lose your ability to obtain legal status in the United States, or be denied an application for United States citizenship?

YES NO N/A

27. As a result of your plea in this case, have you been advised that you may be required pay restitution to any victim in this case pursuant to I.C. §19-5304 and that you may not graduate from Drug Court until you have paid the victim?

YES NO

If "yes", to whom? _____

28. As a result of your plea in this case, have you been advised that you may be required to pay restitution to any other party as a condition of your plea agreement?

YES NO

If "yes", to whom? _____

29. As a result of your plea in this case, will you be required to submit a DNA sample to the state? (I.C. § 19-5506)

YES NO

30. As a result of your plea in this case, is there a **mandatory** driver's license suspension?

YES NO

If "yes", for how long must your license be suspended? _____.

31. Have you discussed with your attorney the fact that **if you are terminated from Drug Court**, the Court will order a pre-sentence investigation, and/or other evaluations and that anything you say during any of those examinations may be used against you in sentencing?

YES NO

32. Has your attorney explained the fact that you have a constitutional right to remain silent during any of those examinations but that you may give up that right and voluntarily participate in those examinations?

YES NO

33. Do you understand that by pleading guilty to a felony, you run the risk that if you have new felony charges in the future, you could be charged as a Persistent Violator?

YES NO

Do you understand that if you are convicted as a Persistent Violator, the court in that new case could sentence you to an enhanced sentence which could include life imprisonment? **YES NO**

34. Do you understand that if you plead guilty to a felony, you will lose your right to vote in Idaho during the period of your sentence? (ID. CONST. art. 6, § 3) **YES NO**

35. Do you understand that if you plead guilty to a felony, you will lose your right to hold public office in Idaho during the period of your sentence? (ID. CONST. art. 6, § 3) **YES NO**

36. Do you understand that if you plead guilty to a felony, you will lose your right to perform jury service in Idaho during the period of your sentence? (ID. CONST. art. 6, § 3) **YES NO**

37. Do you understand that if you plead guilty to a felony you will lose your right to purchase, possess, or carry firearms? (I.C. § 18-310) **YES NO**

38. Do you understand that no one, including your attorney, can force you to plead guilty in this case or enter Drug Court ? **YES NO**

Are you pleading guilty and asking to enter Drug Court freely and voluntarily? **YES NO**

39. Are you pleading guilty because you committed the acts alleged in the information or indictment? **YES NO**

40. If you were provided with an interpreter to help you fill out this form, have you had any trouble understanding your interpreter? **YES NO N/A**

41. Have you had any trouble answering any of the questions in this form which you could not resolve by discussing the issue with your attorney? **YES NO**

42. Has any person (including a law enforcement officer or police office) threatened you or done anything to make you enter this plea against your will? **YES NO**

If your answer is “yes,” what threats have been made and by whom?

43. Other than in the plea agreement, has any person promised you that you will receive any special sentence, reward, favorable treatment, or leniency with regard to the plea you are about to enter? **YES NO**

If your answer is “yes,” what promises have been made and by whom?

44. Are you satisfied with your attorney? **YES NO**

45. Do you understand that no one, including your attorney, can force you to plead guilty in this case? **YES NO**

46. Have you received and reviewed a copy of the Drug Court Participant Handbook? **YES NO**

47. Do you understand and agree that your Drug Court Judge has the authority to terminate you from the program for any single violation, order a pre-sentence report and impose sentence based on that pre-sentence report?

YES NO

48. Do you understand and agree that your Drug Court Judge can consider urinalysis results without any testimony or evidence concerning how the test was performed, the scientific basis for the instruments, the chain of custody, and the accuracy of the testing results?

YES NO

49. Do you seek admission into the Drug Court Program, and accept all of its conditions and rules?

YES NO

50. Have you answered all questions on this Questionnaire truthfully and of your own free will?

YES NO

51. Do you swear under penalty of perjury that your answers to these questions are true and correct?

YES NO

I have answered the questions on pages 1-10 of this Guilty Plea Advisory form truthfully. I understand all of the questions and answers herein, have discussed each question and answer with my attorney, and have completed this form freely and voluntarily. Furthermore, no one has threatened me to do so.

Dated this _____ day of _____, 20__.

DEFENDANT

I hereby acknowledge that I have discussed, in detail, the foregoing questions and answers with my client.

DEFENDANT'S ATTORNEY

I have been advised and agree that Phase IV will last four months effective August 1, 2010.

Dated this _____ day of _____, 20__.

DEFENDANT